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18 Safora Nowrouzi and Travis Williams

19  
20 **UNITED STATES DISTRICT COURT**  
21 **SOUTHERN DISTRICT OF CALIFORNIA**

22 **SAFORA NOWROUZI AND**  
23 **TRAVIS WILLIAMS,**  
24 **INDIVIDUALLY AND ON**  
25 **BEHALF OF ALL OTHERS**  
26 **SIMILARLY SITUATED,**

27 Plaintiffs,

28 v.

MAKER'S MARK DISTILLERY,  
INC., d.b.a. MAKER'S MARK,

Defendant.

Case No.: '14CV2885 JAH NLS

**CLASS ACTION COMPLAINT  
FOR DAMAGES, RESTITUTION  
AND INJUNCTIVE RELIEF FOR  
VIOLATIONS OF:**

- 1.) **CALIFORNIA BUS. & PROF.**  
**§§ 17500 ET SEQ.**
- 2.) **CALIFORNIA BUS. & PROF.**  
**§§ 17200 ET SEQ.**
- 3.) **NELIGENCT**  
**MISREPRESENTATION**
- 4.) **INTENTIONAL**  
**MISREPRESENTATION**

**JURY TRIAL DEMANDED**

## INTRODUCTION

1. Plaintiffs, SAFORA NOWROUZI and TRAVIS WILLIAMS, (collectively as  
2. “Plaintiffs”), bring this statewide Class Action Complaint to enjoin the  
3. deceptive advertising and business practices of MAKER’S MARK  
4. DISTILLERY, INC., d.b.a. MAKER’S MARK (collectively as “Defendant”)  
5. with regard to Defendant’s false and misleading promotion of its whisky.  
6. Defendant promotes its whisky as being “Handmade” when in fact  
7. Defendant’s whisky is manufactured using mechanized and/or automated  
8. processes, which involves little to no human supervision, assistance or  
9. involvement, as demonstrated by photos and video footage of Defendant’s  
10. manufacturing process.
11. 2. Defendant labels the whisky products it manufactures and sells as  
12. “Handmade.” However, photos and video footage of Defendant’s  
13. manufacturing process show Defendant actually employs mechanized and/or  
14. automated processes to manufacture and bottle its whisky, including but not  
15. limited to, (1) the process involved in grinding/breaking up the grains; (2) the  
16. process involved in mixing the grains with other ingredients, such as yeast  
17. and water; (3) the process involved in transferring this mixture into its  
18. fermenting location; and, (4) the process involved in bottling the whisky.
19. 3. Defendant attaches these untrue and misleading labels to all of the whisky  
20. bottles it markets and sells throughout the state of California and throughout  
21. the United States.
22. 4. This nationwide sale and advertising of deceptively labeled products  
23. constitutes: (1) a violation California’s False Advertising Law (“FAL”), Bus.  
24. & Prof. Code §§ 17500 et seq.; (2) a violation of California’s Unfair  
25. Competition Law (“UCL”), Bus. & Prof. Code §§ 17200 et seq.; (3)  
26. negligent misrepresentation; and (4) intentional misrepresentation. This  
27. conduct caused Plaintiffs and other similarly situated damages, and requires  
28.

1 restitution and injunctive relief to remedy and prevent further harm.

2 5. Unless otherwise indicated, the use of any Defendant's name in this  
3 Complaint includes all agents, employees, officers, members, directors, heirs,  
4 successors, assigns, principals, trustees, sureties, subrogees, representatives  
5 and insurers of the named Defendant

6 **JURISDICTION AND VENUE**

7 6. Jurisdiction of this Court arises under 28 U.S.C. § 1332(d), as the matter in  
8 controversy, exclusive of interest and costs, exceeds the sum or value of  
9 \$5,000,000 and is a class action in which a named Plaintiff is a citizen of a  
10 State different than at least one Defendant.

11 7. Based upon information and belief, Plaintiffs allege that Defendant has  
12 shipped approximately 1.4 million cases of whisky in 2013. Each of these  
13 cases holds 6 bottles. Based upon the high advertised price of Defendant's  
14 product and its nationwide availability, Plaintiffs are informed, believe, and  
15 thereon allege the class damages exceed the \$5,000,000 threshold as set by 28  
16 U.S.C. § 1332(d) for a diversity jurisdiction class action.

17 8. The court has personal jurisdiction over Defendant because Defendant  
18 conducts business in the County of San Diego, State of California. Therefore,  
19 Defendant has sufficient minimum contacts with this state, and otherwise  
20 purposely avails itself of the markets in this state through the promotion, sale,  
21 and marketing of its products in this state, to render the exercise of jurisdiction  
22 by this Court permissible under traditional notions of fair play and substantial  
23 justice.

24 9. Venue is proper in the United States District Court, Southern District of  
25 California pursuant to 28 U.S.C. § 1331 for the following reasons: (i)  
26 Plaintiffs reside in the County of San Diego, State of California which is  
27 within this judicial district; (ii) the conduct complained of herein occurred  
28 within this judicial district; (iii) Defendant conducted and does substantial

1 business in the County of San Diego, State of California; and (iv) Defendant is  
 2 subject to personal jurisdiction in this district.

3 **PARTIES**

4 10. Plaintiff, Safora Nowrouzi, is a natural person who resides in the County of  
 5 San Diego, State of California, who was negligently and/or intentionally  
 6 induced into purchasing Defendant's falsely advertised product.

7 11. Plaintiff, Travis Williams, is a natural person who resides in the County of  
 8 San Diego, State of California, who was negligently and/or intentionally  
 9 induced into purchasing Defendant's falsely advertised product.

10 12. Defendant, Maker's Mark Distillery, Inc., d.b.a Maker's Mark, is a  
 11 corporation that is incorporated under the laws of the State of Kentucky, and  
 12 does business within the State of California and within this district.

13 **NATURE OF THE CASE**

14 13. At all times relevant, Defendant made, and continues to make, affirmative  
 15 misrepresentations regarding the whisky it manufactures, markets and sells.  
 16 Specifically, Defendant packaged, advertised, marketed, promoted, and sold  
 17 its whisky to Plaintiffs and other consumers similarly situated, which was  
 18 represented by Defendant to be "Handmade."

19 14. However, Defendant's whisky was and is not "Handmade," as photos and  
 20 video footage of Defendant's manufacturing process, which was made in  
 21 association with Defendant, clearly demonstrate.

22 15. The photos and the video footage made in association with Defendant of  
 23 Defendant's manufacturing process, one of which is titled "Maker's Mark  
 24 Distillery Tour"<sup>1</sup> ("Tour Video") and another titled "Maker's Mark Bourbon  
 25 Factory,"<sup>2</sup> ("Factory Video"), vividly depict the manufacturing process as  
 26 being mechanized and/or automated, rather than "Handmade" as Defendant

27  
 28 <sup>1</sup>See <https://www.youtube.com/watch?v=TkAttdewjb0>

<sup>2</sup>See <https://www.youtube.com/watch?v=22PrqoJb3rM>

1 claims.

2 16. “Handmade” and “handcrafted” are terms that consumers have long  
 3 associated with higher quality manufacturing and high-end products. This  
 4 association and public perception is evident in the marketplace where  
 5 manufacturers charge a premium for “handcrafted” or “handmade” goods. In  
 6 the case of a 750 milliliter bottle of whiskey, similar to the ones Defendant  
 7 manufactures and sells, most commercially available whiskies range in price  
 8 from as little as \$12.99 to \$24.99.<sup>3</sup> Defendant’s purportedly “Handmade” 750  
 9 milliliter bottle of whisky is listed at \$31.99.<sup>4</sup>

10 17. Defendant affixes identical labels on all its “Maker’s Mark Kentucky Straight  
 11 Bourbon Whisky” (“Maker’s Mark”). On these labels, the claim  
 12 “**Handmade**” appears in large *bold* font on the front of the bottle, and two  
 13 more times on the side of the label. *See ¶ 30, 31.* The side of the label reads,  
 14 “Maker’s Mark is America’s only handmade bourbon whisky – never mass  
 15 produced” and that “[w]e’re proud of our unique and full-flavored handmade  
 16 bourbon.” *Id.* Defendant’s website also states that, “[w]hile most distilleries  
 17 use a modern hammer mill to break up their grains, Maker’s Mark uses an old  
 18 antique roller mill, which is less efficient, but reduces the chance of scorching  
 19 the grain and creating a bitter taste.”<sup>5</sup> This is done in an apparent attempt to  
 20 market the whisky as being of higher quality by virtue of it being made *by*  
 21 *hand*. As a result, Defendant induces consumers to purchase, purchase more  
 22 of, and pay more for its whisky on the basis it is of supposedly of superior  
 23 quality and workmanship.

24  
 25 <sup>3</sup> *See*, the price listing for “whiskeys” on the website of BevoMo, a retailer of alcohol, and  
 26 available at: [http://www.bevmo.com/Shop/ProductList.aspx/\\_D-whiskey/N-/No-10/Ntt-whiskey?DNID=Home&Dx=mode%2Bmatchany&fromsearch=true&Ns=SalesPrice%7C0&Ntk=All&Ntx=mode%2Bmatchany](http://www.bevmo.com/Shop/ProductList.aspx/_D-whiskey/N-/No-10/Ntt-whiskey?DNID=Home&Dx=mode%2Bmatchany&fromsearch=true&Ns=SalesPrice%7C0&Ntk=All&Ntx=mode%2Bmatchany)

27 <sup>4</sup> *See*, <http://www.bevmo.com/Shop/ProductDetail.aspx/Spirits/Bourbon/Kentucky/Maker-s-Mark-Distillery/Maker-s-Mark-Bourbon-Whisky/555>

28 <sup>5</sup> *See*, <https://www.makersmark.com/sections/88-slow-and-good>

1 18. However, contrary to Defendant's misleading labeling, its whisky is  
2 predominately or entirely made by mechanized and automated processes, as  
3 demonstrated by the photos and video footage of Defendant's manufacturing  
4 processes. *See ¶¶ 40, 44, 47, 50, 52, 53, 56; FN 1 and 2.*

5 19. As a consequence of Defendant's unfair and deceptive practices, Plaintiffs and  
6 other similarly situated consumers have purchased Maker's Mark whisky  
7 under the false impression that the whisky was of superior quality by virtue of  
8 being "Handmade" and thus worth an exponentially higher price as compared  
9 to other similar whiskies.

10 20. Each consumer, including Plaintiffs, were exposed to virtually the same  
11 material misrepresentations, as the identical labels were prominently placed  
12 on all of the Marker's whisky bottles that were sold, and are currently being  
13 sold, throughout the U.S. and the State of California.

14 21. As a result of Defendant's misrepresentations regarding its Maker's Mark  
15 whisky, Plaintiffs and other consumers similarly situated overpaid for the  
16 product, and/or purchased the product under the false believe that the whisky  
17 they purchased was of superior quality since it was allegedly "Handmade."  
18 Had Plaintiffs and other consumers similarly situated been made aware that  
19 Maker's whisky was not "Handmade" they would not have purchased the  
20 product, or would have paid less for it, or purchased different products.

21 22. As a result of Defendant's false and misleading statements, as well as  
22 Defendant's other conduct described herein, Plaintiffs and other similarly  
23 situated consumers purchased thousands, if not millions, of bottles of Maker's  
24 Mark whisky and have suffered, and continue to suffer, injury in fact  
25 including the lost of money and/or property.

26 23. Defendant's conduct as alleged herein violates several California laws, as  
27 more fully set forth herein.

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1 24. This action seeks, among other things, equitable and injunctive relief;  
 2 restitution of all amounts illegally retained by Defendant; and disgorgement of  
 3 all ill-gotten profits from Defendant's wrongdoing alleged herein.

4 **FACTUAL ALLEGATIONS**

5 25. Defendant manufactures, markets and sells "Maker's Mark Kentucky Straight  
 6 Bourbon Whiskey" (i.e., "Maker's Mark"). *See below*, ¶¶ 30, 31.

7 26. Defendant manufactures all of its whisky at its distillery, located in the City of  
 8 Loretto, State of Kentucky.

9 27. Defendant manufactures and sells millions of bottles each year. In 2013,  
 10 Defendant sold approximately 1.4 million cases, each containing 6 bottles.<sup>6</sup>  
 11 That is a total of approximately 8.4 million bottles. A 750-milliliter bottle of  
 12 Maker's Mark sells for approximately \$31.99.<sup>7</sup>

13 28. Defendant has faced continual production shortages and has attempted to  
 14 remedy those shortfalls by expanding and mechanizing its facility.  
 15 Defendant's supply shortages have been so severe that Defendant even  
 16 proposed "watering down" its whisky's alcohol content to meet production  
 17 demands.<sup>8</sup>

18 29. All of Maker's whisky bottles display a label prominently claiming the  
 19 whisky is "Handmade." *See below*, ¶ 30, 31. This language appears three  
 20 times on the label. Once in big bold letters on the front, and two more times  
 21 on the side of the bottle. *Id.* Specifically, the side of the label states that  
 22 "Maker's Mark is America's only handmade bourbon whisky - never mass  
 23 produced" and "[w]e're proud of our unique and full-flavored handmade  
 24 bourbon..." *Id.*

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 27 <sup>6</sup>See, <http://www.kentucky.com/2014/02/27/3111627/makers-mark-buffalo-trace-plan.html>

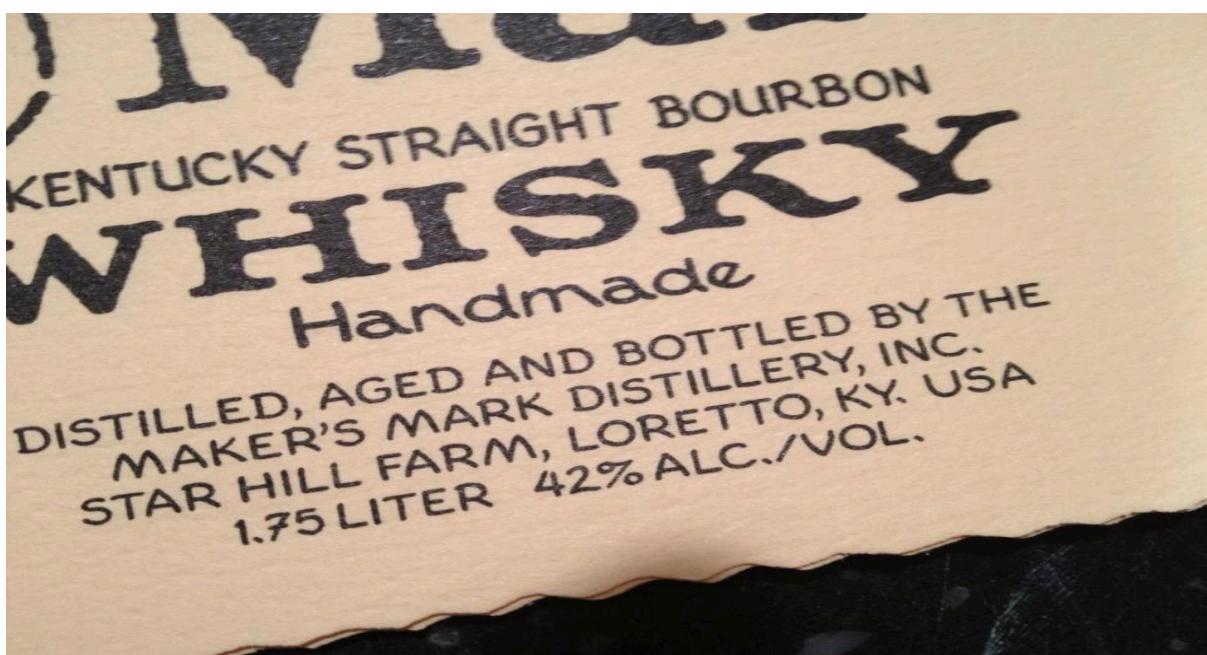
28 <sup>7</sup>See, <http://www.bevmo.com/Shop/ProductDetail.aspx/Spirits/Bourbon/Kentucky/Maker-s-Mark-Distillery/Maker-s-Mark-Bourbon-Whisky/555>

<sup>8</sup>See, <http://www.usatoday.com/story/news/nation/2013/02/11/makers-mark-bourbon/1910773/>

1 30. Defendant advertises its product with the following label:



16 31. Defendant's label prominently claims its product is "Handmade:"



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- 1 32. On November 17, 2014, Plaintiff, Travis Williams, purchased a bottle of
- 2 Defendant's Maker's Mark whisky, which displayed the offending label (*see*
- 3 ¶¶ 30, 31), for \$ 32.99 from a local grocery store in San Diego, California.
- 4 33. On November 27 2014, Plaintiff, Safora Nowrouzi, purchased a bottle of
- 5 Defendant's Maker's Mark whisky, which displayed the offending label (*see*
- 6 ¶¶ 31, 31), for \$ 58.99 from a Ralphs grocery store in the County of Los
- 7 Angeles, State of California.
- 8 34. Based on the misrepresentations that the product was "Handmade,"
- 9 Plaintiffs believed Maker's Mark whisky was of superior quality by virtue of
- 10 the product being made by hand rather than by a machine, and relied upon
- 11 said misrepresentations when purchasing Defendant's product.
- 12 35. Although Defendant claims its whisky is "Handmade," Maker's Mark
- 13 whisky is actually manufactured using a mechanized and/or automated
- 14 process, with little to no human supervision, assistance or involvement as
- 15 described herein.
- 16 36. Defendant's whisky manufacturing process involves grinding and breaking
- 17 up grains, which are later mixed with yeast and water to make "mash." The
- 18 mash is then left to ferment in large vats and is later distilled into whisky.
- 19 37. Defendant, through its website, claims "while most distilleries use a modern
- 20 hammer mill to break up their grains, Maker's Mark is produced using an old
- 21 antique roller mill, which is less efficient, but reduces the chance of
- 22 scorching the grain and creating a bitter taste."<sup>9</sup>
- 23 38. In the Tour Video Defendant's representative claims that "all" of their grain
- 24 is processed by said "roller mill."
- 25 39. Defendant claims it uses an "old antique roller mill" to crush its grain in an
- 26 effort to describe its manufacturing process, and its product, as "Handmade"
- 27 as its labels claims.

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<sup>9</sup> <https://www.makersmark.com/sections/88-slow-and-good>

1 40. This is Defendant's "old antique roller mill":



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18 41. As the photo depicts, the mill is powered by two electronically driven motors  
19 and the entire mechanized and/or automated process is controlled by a set of  
20 electronic control panels as seen to left of the machine. *See, ¶ 40.*

21 42. Defendant's mill is neither old nor antique. Defendant's mill is a modern  
22 mechanized and/or automated machine that requires little to no human  
23 supervision, assistance or involvement to grind and prepare the grain, which  
24 is the primary ingredient in Defendant's whisky.

25 43. After the grain has been grounded, it is placed in a large vat where other  
26 ingredients, such as water and yeast, are added. This mixing process is also  
27 performed by a machine. *See, ¶ 44.*

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1 44. Defendant's mixing process is shown here:



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19 45. As the picture above indicates, the gain mash and other ingredients are mixed  
20 using a machine. More specifically, a paddle like device, which is attached to  
21 an electric motor, is used to mix the mixture. The motor is mounted onto  
22 metal beams that rest above the vat into which the mixture sits. This mixing  
23 process is mechanized, automated, and involves little to no human  
24 supervision, assistance or involvement; thus, it is clearly not "Handmade" as  
25 Defendant advertises.

26 46. The mixture is then transferred to large fermenting vat. Based on the high  
27 volume of liquid transferred, the pictorial evidence below (See ¶ 47) and the  
28 elaborate piping system shown in the Tour Video, Plaintiffs allege that this

1 transferring process is automated, mechanized, and involves little to no  
2 human supervision, assistance or intervention.

3 47. Defendant's transferring process of the gain/mash mixture is shown here:



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19 48. The mixture is then allowed to ferment and is then subsequently distilled into  
20 the liquor. The Tour Video demonstrates this process and shows various  
21 machines used in the fermentation and distillation process. The Tour Video  
22 also shows that all, or nearly all, of these machines are connected by an  
23 elaborate system of pipes and have an electronic control panel which controls  
24 the machine without human intervention, as the machines are shown  
25 functioning in the video without human supervision or intervention. On this  
26 basis, Plaintiffs allege the fermentation and distillation process are  
27 mechanized and/or automated and that therefore Defendant's product is not  
28 "Handmade" as Defendant advertises.

1 49. After the liquor is distilled it is transferred into oak barrels to age by means of  
2 a mechanized and/or automated process. *See below ¶ 50.*  
3 50. Defendant's barrel filling process is shown here:



16 51. After Maker's whisky has aged for the appropriate time, the whisky is  
17 bottled. Defendant's bottling process involves an elaborate filling system  
18 wherein the whisky is pumped through a series of machines and pipes to fill  
19 approximately a dozen bottles at a time. The entire process is automated  
20 and/or mechanized, and involves little to no human supervision, assistance or  
21 involvement. *See, ¶¶ 52 and 53; the Factory Video.*

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52. Defendant's automated bottling process shown here:



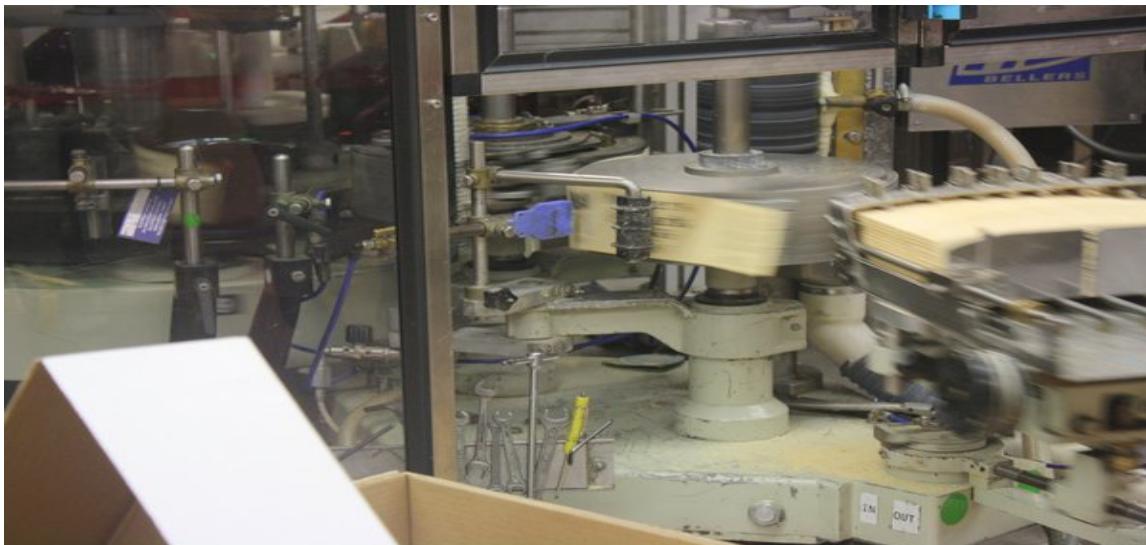
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53. A close up of Defendant's bottling process shown here:



1 54. As the pictures above and the Factory Video indicate, there is virtually no  
2 human involvement in this system, other than perhaps the pressing of a  
3 button. The Factory Video even shows the entire bottling process occurring  
4 without any human involvement whatsoever.

5 55. Ironically, even the labeling of the bottles, which contains the alleged  
6 “Handmade” statement, is achieved by a mechanized and/or automated  
7 process. *See ¶ 56.*

8 56. Defendant’s labeling process is show here:



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18 57. Thus, based on the photos listed above and the two separate videos depicting  
19 Defendant’s manufacturing processes referenced herein, Plaintiffs allege that  
20 Defendant utilizes a mechanized and/or automated process to manufacture  
21 Maker’s Mark whisky; and therefore, Defendant’s product is not  
22 “Handmade” as Defendant advertises.

23 58. As a result of Defendant’s misrepresentations regarding its Maker’s Mark  
24 whisky, Plaintiffs and other putative class members were induced into  
25 purchasing and overpaying for the product under the belief that the whisky  
26 they purchased was of superior quality because it was “Handmade.” Had  
27 Plaintiffs and putative class members been made aware that Maker’s Mark  
28 whisky was not in fact “Handmade” they would not have purchased the

1 product, or would have paid less for it, or purchased a different product.  
2 Therefore, Plaintiffs and putative class members suffered injury in fact and  
3 lost money and/or property as a result of Defendant's conduct complained of  
4 herein.

5 59. During the "Class Period," as defined below, Plaintiffs and others similarly  
6 situated were exposed to and saw Defendant's advertising, marketing, and  
7 packaging claims disseminated by Defendant for the purpose of selling  
8 goods. Plaintiffs and putative class members purchased Defendant's product  
9 in reliance on these claims, and thereby suffered injury in fact and lost money  
10 and/or property as a result of Defendant's unfair, misleading and unlawful  
11 conduct described herein.

12 60. In making the decision to purchase a Maker's Mark whisky, Plaintiffs relied  
13 upon Defendant's advertisements and/or other promotional materials  
14 prepared and approved by Defendant and/or its agents and disseminated  
15 through its product's packaging containing the misrepresentations alleged  
16 herein.

17 61. Producing consumer goods by means of mechanized or automated process  
18 has long be touted as a cheaper way to "mass produce" consumer goods. By  
19 utilizing machines to produce goods, manufacturers are able to make more  
20 goods in a shorter period of time at a lower cost. Mechanization of course  
21 sacrifices quality, as machines cannot exercise the skill and care of a human  
22 craftsman. Every consumer would undoubtedly prefer a higher quality  
23 product, however many are not able or willing to pay for such quality. The  
24 demand for higher quality products has always existed amongst consumers  
25 and thus manufacturers market their products to those seeking higher quality  
26 goods and demand a premium price for that quality.

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1 62. Defendant seeks to capitalize on consumers' preference for higher quality  
 2 whisky, and to that end, has intentionally marketed its product as  
 3 "Handmade." *See ¶¶ 30, 31.*

4 63. Defendant is aware that consumers are willing to pay more for products of  
 5 higher quality; and for that reason Defendant has marketed its whisky as  
 6 "Handmade" induce the purchase of its product, sell a greater volume of its  
 7 product, and to sell Defendant's product at a higher price in comparison to  
 8 competitors' products.

9 64. Defendant's misleading advertising is publicly disseminated on a widespread  
 10 and continuous basis during the Class Period as the offending label  
 11 containing the bold and conspicuously placed "Handmade" text was affixed  
 12 to all of the Maker's Mark whisky bottles Defendant sold throughout the  
 13 State of California and throughout the United States.

14 65. Defendant's label was untrue, false, and misleading to Plaintiffs and putative  
 15 class members as a reasonable consumer would have interpreted Defendant's  
 16 claims according to their common meaning. Meridian Webster defines  
 17 "handmade" as "created by a hand process rather than by a machine."<sup>10</sup>  
 18 Therefore, the reasonable consumer would have been misled into believing  
 19 Maker's Mark whisky was made *by hand* when in fact it is not.

20 66. Defendant knew, or in the exercise of reasonable care should have known, its  
 21 labels were misleading. Defendant could have easily omitted the bold text  
 22 "Handmade" from its whisky packaging. However, Defendant deliberately  
 23 chose to insert such text and intentionally or negligently retained that false  
 24 claim within its product's packaging for the purpose of selling its product.

25 67. Defendant made a tactical decision to deceive consumers with the intent of  
 26 reaping the financial benefit of the false, misleading, and deceptive  
 27 advertising regarding the mechanized and/or automated means it employs in

28 <sup>10</sup> *See,* <http://www.merriam-webster.com/thesaurus/handmade>

1 the manufacturing of its products, intentionally capitalizing on a reasonable  
2 consumer's trust in a nationally branded company perceived to supply quality  
3 "Handmade" whisky.

4 **FIRST CAUSE OF ACTION FOR VIOLATIONS OF**  
5 **CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.**  
6 **[CALIFORNIA'S FALSE ADVERTISING LAW]**

7 68. Plaintiffs repeat, re-allege and incorporate by reference the above allegations  
8 as if fully stated herein.

9 69. Plaintiffs bring this cause of action on behalf of themselves and on behalf of  
10 the putative Class.

11 70. Plaintiffs and Defendant are both "person[s]" as defined by California  
12 Business & Professions Code § 17506. California Business & Professions  
13 Code § 17535 authorizes a private right of action on both an individual and  
14 representative basis.

15 71. The misrepresentations, acts, and non-disclosures by Defendant of the  
16 material facts detailed above constitute false and misleading advertising and  
17 therefore violate Business & Professions Code §§ 17500 *et seq.*

18 72. At all times relevant, Defendant's advertising and promotion regarding its  
19 whisky being "Handmade" was untrue, misleading and likely to deceive the  
20 reasonable consumer and the public; and, in fact, has deceived the Plaintiffs  
21 and consumers similarly situated by representing that the product was  
22 "Handmade" when in fact Defendant knew and failed to disclose that its  
23 whisky was made predominately or entirely made by machines through the  
24 use of mechanized and/or automated processes.

25 73. Defendant engaged in the false and/or misleading advertising and marketing  
26 as alleged herein with the intent to directly or indirectly induce the purchase  
27 of whisky Defendant knew, or had reason to know, was not in fact  
28 "Handmade."

1 74. In making and publicly disseminating the statements and/or omissions  
2 alleged herein, Defendant knew or should have known that the statements  
3 and/or omissions were untrue or misleading, and acted in violation of  
4 California Business & Professions Code §§ 17500 *et seq.*

5 75. Plaintiffs and members of the putative Class have suffered injury in fact and  
6 have lost money and/or property as a result of Defendant's false advertising,  
7 as more fully set forth herein. Plaintiffs and members of the Class have been  
8 injured because they were induced to purchase and overpay for Maker's  
9 Mark whisky on the belief that Defendant's product was "Handmade."  
10 Plaintiffs and members of the putative Class have been injured because had  
11 they been made aware that Maker's Mark whisky was not handmade, but  
12 rather produced by a less desirable mechanized and/or automated processes,  
13 they would have not purchased the whiskey, or would have paid less for the  
14 product, or would have purchased different product from another  
15 manufacturer.

16 76. At a date presently unknown to Plaintiffs, but at least four years prior to the  
17 filing of this action, and as set forth above, Defendant has committed acts of  
18 untrue and misleading advertising and promotion of Maker's Mark whisky,  
19 as defined by Business & Professions Code §§ 17500 *et seq.*, by engaging in  
20 the false advertising and promotion of its whisky as being "Handmade" in its  
21 product's labeling.

22 77. The false and misleading advertising of Defendant, as described above,  
23 presents a continuing threat to consumers, as Defendant continues to use the  
24 deceptive labels and advertising, which will continue to mislead consumers  
25 who purchase Maker's Mark whisky under false premises.

26 78. As a direct and proximate result of the aforementioned acts and  
27 representations of Defendant, Defendant received and continues to hold  
28 monies rightfully belonging to Plaintiffs and other similarly situated

1 consumers who were led to purchase, purchase more of, or pay more for,  
 2 Maker's Mark whisky, due to the unlawful acts of Defendant, during the  
 3 Class Period.

4 **SECOND CAUSE OF ACTION FOR VIOLATIONS OF**  
 5 **CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**  
 6 **[CALIFORNIA'S UNFAIR COMPETITION LAW]**

7 79. Plaintiffs repeat, re-allege and incorporate by reference the above allegations  
 8 as if fully stated herein.

9 80. Plaintiffs and Defendant are each “person[s]” as defined by California  
 10 Business & Professions Code § 17201. California Business & Professions  
 11 Code § 17204 authorizes a private right of action on both an individual and  
 12 representative basis.

13 81. “Unfair competition” is defined by Business and Professions Code Section §  
 14 17200 as encompassing several types of business “wrongs,” four of which are  
 15 at issue here: (1) an “unlawful” business act or practice, (2) an “unfair”  
 16 business act or practice, (3) a “fraudulent” business act or practice, and (4)  
 17 “unfair, deceptive, untrue or misleading advertising.” The definitions in §  
 18 17200 are drafted in the disjunctive, meaning that each of these “wrongs”  
 19 operates independently from the others.

20 **A. “Unlawful” Prong**

21 82. Because Defendant has violated California's False Advertising Law, Business  
 22 & Professions Code §§ 17500 *et seq.*, Defendant has violated California's  
 23 Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.*,  
 24 which provides a cause of action for an “unlawful” business act or practice  
 25 perpetrated on members of the California public.

26 83. Defendant had other reasonably available alternatives to further its legitimate  
 27 business interest, other than the conduct described herein, such as selling  
 28

1 Maker's Mark whisky without falsely stating that it was "Handmade."

2 84. Plaintiffs and the putative class members reserve the right to allege other  
3 violations of law, which constitute other unlawful business practices or acts,  
4 as such conduct is ongoing and continues to this date.

5 **B. "Unfair" Prong**

6 85. Defendant's actions and representations constitute an "unfair" business act or  
7 practice under § 17200 in that Defendant's conduct is substantially injurious  
8 to consumers, offends public policy, and is immoral, unethical, oppressive,  
9 and unscrupulous as the gravity of the conduct outweighs any alleged benefits  
10 attributable to such conduct. Without limitation, it is an unfair business act or  
11 practice for Defendant to knowingly or negligently represent to the consuming  
12 public, including Plaintiffs, that Maker's Mark whisky is "Handmade" when  
13 in fact it is predominately or entirely manufactured by mechanized and/or  
14 automated processes rather than by hand. Such conduct by Defendant is  
15 "unfair" because it offends established public policy and/or is immoral,  
16 unethical, oppressive, unscrupulous and/or substantially injurious to  
17 consumers in that consumers are led to believe that Maker's Mark whisky is  
18 of superior quality and workmanship by virtue of the it being "Handmade,"  
19 when in fact it is not. Defendant's product labeling misleads and deceives  
20 consumers into believing Maker's Mark whisky is "Handmade," when  
21 actually it is entirely, or almost entirely, manufactured by mechanized and/or  
22 automated processes.

23 86. At a date presently unknown to Plaintiffs, but at least four years prior to the  
24 filing of this action, and as set forth above, Defendant has committed acts of  
25 unfair competition as defined by Business & Professions Code §§ 17200 *et*  
26 *seq.*, by engaging in the false advertising and promotion of Maker's Mark  
27 whisky as, *inter alia*, "Handmade."

28 //

1 87. Defendant could have and should have furthered its legitimate business  
2 interests by expressly indicating in its labeling that Maker's whisky is in fact  
3 made by machines rather than by hand. Alternatively, Defendant could have  
4 refrained from misstating that Maker's whisky was "Handmade" when it in  
5 fact is not.

6 88. Plaintiffs and other members of the Class could not have reasonably avoided  
7 the injury suffered by each of them. Plaintiffs reserve the right to allege  
8 further conduct that constitutes other unfair business acts or practices. Such  
9 conduct is ongoing and continues to this date, as Defendant has failed to  
10 request the removal of deceptively labeled products from its resellers' stores.

11 **C. "Fraudulent" Prong**

12 89. Defendant's claims and misleading statements were false, misleading and/or  
13 likely to deceive the consuming public within the meaning of Business &  
14 Professions Code §§ 17200 *et seq.* Defendant engaged in fraudulent acts and  
15 business practices by knowingly or negligently representing to Plaintiffs, and  
16 other similarly situated consumers, whether by conduct, orally, or in writing  
17 by:

18 a. Intentionally designing the product's label to conspicuously state, in  
19 three locations, that Maker's Mark whisky is "Handmade" without  
20 accurately identifying the true mechanized and/or automated means  
21 by which the whisky is manufactured.

22 b. Intentionally allowing Defendant's resellers to use and advertise  
23 Maker's Mark whisky through the use of Defendant's labels, which  
24 contain misleading and false statements.

25 90. Plaintiffs reserve the right to allege further conduct that constitutes other  
26 fraudulent business acts or practices. Such conduct is ongoing and continues  
27 to this date.

28 ///

1 91. The fraudulent, unlawful and unfair business practices and false and  
2 misleading advertising of Defendant, as described above, presents a  
3 continuing threat to consumers in that they will continue to be misled into  
4 purchasing Maker's Mark whisky under false premises.

5 **D. "Unfair, Deceptive, Untrue or Misleading Advertising" Prong**

6 92. Defendant's advertising is unfair, deceptive, untrue or misleading in that  
7 consumers are led to believe that Maker's Mark whisky "Handmade" and that  
8 is of superior quality and workmanship by virtue of the it being "Handmade,"  
9 when in fact Maker's Mark is not made by hand but rather by machines  
10 though mechanized and/or automated processes.

11 93. Plaintiffs, who are reasonable consumers, and the public would be likely to be  
12 and actually were, deceived and mislead by Defendant's advertising as they  
13 would, and did, interpret the representation "Handmade" in accord with its  
14 ordinary usage, that the product was made by hand rather than by a machine  
15 when it fact it was not.

16 94. As a direct and proximate result of the aforementioned acts and  
17 representations of Defendant, Defendant received and continues to hold  
18 monies rightfully belonging to Plaintiffs and other similarly situated  
19 consumers who were led to purchase, purchase more of, or pay more for,  
20 Maker's Mark whisky, due to the unlawful acts of Defendant.

21 95. Thus, Defendant caused Plaintiffs and other members of the Class to purchase  
22 Maker's Mark whisky under false premises during the Class Period.

23 96. Defendant has engaged in unlawful, unfair and fraudulent business acts or  
24 practices, entitling Plaintiffs, and putative class members, to a judgment and  
25 equitable relief against Defendant, as set forth in the Prayer for Relief.  
26 Pursuant to Business & Professions Code § 17203, as result of each and every  
27 violation of the UCL, which are continuing, Plaintiffs are entitled to  
28 restitution and injunctive relief against Defendant, as set forth in the Prayer

1 for Relief.

2 97. Plaintiffs and members of the putative class have suffered injury in fact and  
3 have lost money or property as a result of Defendant's unfair competition, as  
4 more fully set forth herein. Plaintiffs and members of the putative class have  
5 been injured as they relied on Defendant's intentional misrepresentation and  
6 were induced into purchasing, purchasing more of, and overpaying for  
7 Maker's Mark whisky. Plaintiffs and members of the Class have been injured  
8 as had they been made aware that the product was machine rather than  
9 handmade, they would not have purchased the product, or would have paid  
10 less for it, or purchased a different product from another manufacturer.

11 98. Defendant, through its acts of unfair competition, has unfairly acquired  
12 monies from Plaintiffs and members of the putative Class. It is impossible for  
13 Plaintiffs to determine the exact amount of money that Defendant has  
14 obtained without a detailed review of the Defendant's books and records.  
15 Plaintiffs request that this Court restore these monies and enjoin Defendant  
16 from continuing to violate California Business & Professions Code §§ 17200  
17 *et seq.*, as discussed above.

18 99. Unless Defendant is enjoined from continuing to engage in the unlawful,  
19 unfair, fraudulent, untrue, and deceptive business acts and practices as  
20 described herein, consumers residing within California, will continue to be  
21 exposed to and harmed by Defendant's unfair business practices.

22 100. Plaintiffs further seek an order requiring Defendant to make full restitution of  
23 all moneys wrongfully obtained and disgorge all ill-gotten revenues and/or  
24 profits, together with interest thereupon.

25 101. Plaintiffs also seek attorneys' fees and costs pursuant to, *inter alia*, California  
26 Civil Code Section 1021.5.

27 ///

28 ///

## **THIRD CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION**

102. Plaintiffs repeat, re-allege and incorporate by reference the above allegations as if fully stated herein.

103. At a date presently unknown to Plaintiffs, but at least four years prior to the filing of this action, and as set forth above, Defendant represented to the public, including Plaintiffs, by packaging and other means, that Maker's Mark whisky was "Handmade," as described herein.

104. Defendant made the representations herein alleged with the intention of inducing the public, including Plaintiffs and putative class members, to purchase Maker's Mark whisky.

105. Plaintiffs and other similarly situated persons in California saw, believed, and relied upon Defendant's advertising representations and, in reliance on them, purchased the product, as described herein.

106. At all times relevant, Defendant made the misrepresentations herein alleged when Defendant should have known these representations to be untrue, and Defendant had no reasonable basis for believing the representations to be true.

107. As a proximate result of Defendant's negligent misrepresentations, Plaintiffs and other consumers similarly situated were induced to purchase, purchase more of, or pay more for, Maker's Mark whisky, due to the unlawful acts of Defendant, in an amount to be determined at trial, during the Class Period.

## **FOURTH CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION**

108. Plaintiffs repeat, re-allege and incorporate herein by reference the above allegations as if fully stated herein.

109. At a date presently unknown to Plaintiffs, but at least four years prior to the  
filing of this action, and as set forth above, Defendant intentionally

1 represented to the public, including Plaintiffs, by promoting and other means,  
2 that Maker's Mark whisky is "Handmade," in the product's labeling, as  
3 described herein. Defendant's representations were untrue.

4 110. Defendant made the representations herein alleged with the intention of  
5 inducing the public, including Plaintiffs, to purchase Maker's Mark whisky,  
6 for Defendant's own financial gain.

7 111. Defendant intentionally made such misrepresentations by printing  
8 "Handmade" on three separate locations of its product's label.

9 112. The statements regarding Maker's Mark whisky being "Handmade" were  
10 misleading because Defendant actually uses an entirely, or nearly entirely,  
11 mechanized and/or automated process for manufacturing its whisky. The  
12 whisky is therefore not "Handmade" as Defendant advertises on its product's  
13 labeling.

14 113. Plaintiffs and other similarly situated persons in California saw, believed, and  
15 relied upon Defendant's advertising representations and, in reliance on such  
16 representations, purchased the products, as described above.

17 114. At all times relevant, Defendant intentionally made the misrepresentations  
18 herein alleged, allowed the misrepresentations to continue to be made by its  
19 resellers and Defendant knew the representations to be false.

20 115. As a proximate result of Defendant's intentional misrepresentations, Plaintiffs  
21 and other consumers similarly situated were induced to spend an amount of  
22 money to be determined at trial on Defendant's misrepresented product.

23 116. Defendant knew that its whisky was not "Handmade," but nevertheless made  
24 representations that it was with the intention that consumers rely on their  
25 representations.

26 117. Defendant also knew that retailers were advertising its whisky as "Handmade"  
27 as Defendant designed, manufactured, and affixed the product labeling to its  
28 whisky before supplying its products to retailers.

1 118. Plaintiffs and other consumers similarly situated, in purchasing and using the  
2 products as herein alleged, did rely on Defendant's representations, including  
3 the representations on Maker's Mark whisky label, all to their damage and/or  
4 detriment as herein alleged.

5 119. Plaintiffs allege the "who, what, when, where, and how" of the alleged  
6 deception by Defendant as follows:

- 7 a. The "who" is Defendant Maker's Mark Distillery, Inc., d.b.a.  
8 Maker's Mark;
- 9 b. The "what" is representation that Defendant's whisky is  
10 "Handmade";
- 11 c. The "when" is the date Plaintiffs purchased the product and the Class  
12 Period of four years prior to the filing of the Complaint;
- 13 d. The "where" is in Defendant's product labeling (*See ¶¶ 30, 31*); and
- 14 e. The "how" is the allegation that Defendant did not disclose that its  
15 whisky was not "Handmade" but rather produced entirely, or almost  
16 entirely, by mechanized and/or automated processes, not by hand.

17 120. By engaging in the acts described above, Defendant is guilty of malice,  
18 oppression, and fraud, and each Plaintiff is therefore entitled to recover  
19 exemplary or punitive damages.

#### 20 CLASS ACTION ALLEGATIONS

21 121. Plaintiffs and the members of the Class have all suffered injury in fact as a  
22 result of the Defendant's unlawful and misleading conduct.

23 122. The "Class Period" means four years prior to filing of the Complaint in this  
24 action.

25 123. Plaintiffs bring this lawsuit on behalf of themselves and other California  
26 consumers similarly situated under Rule 23(b)(2) and (b)(3) of the Federal  
27 Rules of Civil Procedure. Subject to additional information obtained through  
28 further investigation and/or discovery, the proposed "Class" consists of:

1                   “All persons who purchased a Maker’s Mark whisky  
2                   in the State of California within four years prior to  
3                   the filing of the Complaint in this action.”

4                   Excluded from the Class are Defendant and any of its officers, directors, and  
5                   employees, or anyone who purchased a Maker’s Mark whisky for the  
6                   purposes of resale. Plaintiffs reserve the right to modify or amend the Class  
7                   definition before the Court determines whether certification is appropriate.

8           124. ***Ascertainability.*** The members of the Class are readily ascertainable from  
9                   Defendant’s records and/or Defendant’s agent’s records regarding retail and  
10                  online sales, as well as through public notice.

11           125. ***Numerosity.*** The members of the Class are so numerous that their individual  
12                  joinder is impracticable. Plaintiffs are informed and believe, and on that basis  
13                  alleges, that the proposed class consists of thousands of members, if not  
14                  millions.

15           126. ***Existence and Predominance of Common Questions of Law and Fact.***  
16                  Common questions of law and fact exist as to all members of the Class  
17                  predominate over any questions affecting only individual Class members. All  
18                  members of the Class have been subject to the same conduct and their claims  
19                  are based on the standardized marketing, advertisements and promotions. The  
20                  common legal and factual questions include, but are not limited to, the  
21                  following:

- 22                  (a) Whether Defendant’s whisky is manufactured by any  
23                          mechanized and/or automated process rather than by hand;
- 24                  (b) Whether Defendant’s whisky is predominately manufactured  
25                          by mechanized and/or automated process rather than by hand;
- 26                  (c) Whether Defendant’s claims and representations above are  
27                          untrue, or are misleading, or reasonably likely to deceive;

28                  ///

1 (d) Whether Defendant's conduct is an unlawful act or practice  
2 within the meaning of California Business & Professions Code  
3 §§ 17200 *et seq*;

4 (e) Whether Defendant's conduct is a fraudulent act or practice  
5 within the meaning of California Business & Professions Code  
6 §§ 17200 *et seq*;

7 (f) Whether Defendant's conduct is an unfair act or practice  
8 within the meaning of California Business & Professions Code  
9 §§ 17200 *et seq*;

10 (g) Whether Defendant's advertising is unfair, deceptive, untrue or  
11 misleading within the meaning of California Business &  
12 Professions Code §§ 17200 *et seq*;

13 (h) Whether Defendant's advertising is false, untrue, or misleading  
14 within the meaning of California Business & Professions Code  
15 §§ 17500 *et seq*;

16 (i) Whether Defendant acted intentionally in making the  
17 misrepresentations contained in its product's label.

18 (j) Whether Defendant, through its conduct, received money that,  
19 in equity and good conscience, belongs to Plaintiffs and  
20 members of the Class;

21 (k) Whether Plaintiffs and proposed members of the Class are  
22 entitled to equitable relief, including but not limited to  
23 restitution and/or disgorgement; and

24 (l) Whether Plaintiffs and proposed members of the Class are  
25 entitled to injunctive relief sought herein.

26 127. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the  
27 Class in that Plaintiffs are a member of the Class that Plaintiffs seek to  
28 represent. Plaintiffs, like members of the proposed Class, purchased

1           Defendant's whisky after exposure to the same material misrepresentations  
2           and/or omissions appearing in the product's labeling, and received a product  
3           that was manufactured by mechanized and/or automated means rather than by  
4           hand. Plaintiffs are advancing the same claims and legal theories on behalf of  
5           themselves and all absent members of the Class. Defendant has no defenses  
6           unique to the Plaintiffs.

7           128. ***Adequacy of Representation.*** Plaintiffs will fairly and adequately protect the  
8           interests of the members of the Class. Plaintiffs have retained counsel  
9           experienced in consumer protection law, including class actions. Plaintiffs  
10           have no adverse or antagonistic interest to those in the Class, and will fairly  
11           and adequately protect the interests of the Class. Plaintiffs' attorneys are  
12           aware of no interests adverse or antagonistic to those of Plaintiffs and  
13           proposed Class.

14           129. ***Superiority.*** A class action is superior to all other available means for the fair  
15           and efficient adjudication of this controversy. Individualized litigation would  
16           create the danger of inconsistent and/or contradictory judgments arising from  
17           the same set of facts. Individualized litigation would also increase the delay  
18           and expense to all parties and court system and the issues raised by this action.  
19           The damages or other financial detriment suffered by individual Class  
20           members may be relatively small compared to the burden and expense that  
21           would be entailed by individual litigation of the claims against the Defendant.  
22           The injury suffered by each individual member of the proposed class is  
23           relatively small in comparison to the burden and expense of individual  
24           prosecution of the complex and extensive litigation necessitated by  
25           Defendant's conduct. It would be virtually impossible for members of the  
26           proposed Class to individually redress effectively the wrongs to them. Even if  
27           the members of the proposed Class could afford such litigation, the court  
28           system could not. Individualized litigation increases the delay and expense to

1 all parties, and to the court system, presented by the complex legal and factual  
2 issues of the case. By contrast, the class action device presents far fewer  
3 management difficulties, and provides the benefits of single adjudication,  
4 economy of scale, and comprehensive supervision by a single court.  
5 Therefore, a class action is maintainable pursuant to Fed. R. Civ. P. 23(b)(3).

6 130. Unless the Class is certified, Defendant will retain monies received as a result  
7 of Defendant's unlawful and deceptive conduct alleged herein. Unless a class-  
8 wide injunction is issued, Defendant will also likely continue to, or allow its  
9 resellers to, advertise, market, promote and package Maker's Mark whisky in  
10 an unlawful and misleading manner, and members of the Class will continue  
11 to be misled, harmed, and denied their rights under California law.

12 131. Further, Defendant has acted or refused to act on grounds that are generally  
13 applicable to the class so that declaratory and injunctive relief is appropriate to  
14 the Class as a whole, making class certification appropriate pursuant to Fed.  
15 R. Civ. P. 23(b)(2).

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiffs pray that judgment be entered against Defendant,  
18 and Plaintiffs and Class members be awarded damages from Defendant as follows:

19 • That this action be certified as a Class Action, Plaintiffs be appointed as  
20 the representatives of the Class, and Plaintiffs' attorneys be appointed  
21 Class counsel;

22 • A temporary, preliminary and/or permanent order for injunctive relief  
23 requiring Defendant to: (i) discontinue advertising, marketing and  
24 otherwise representing its Maker's Mark whisky as "Handmade"; (ii)  
25 disclose the mechanized and/or processes utilized in the manufacture of  
26 Maker's Mark whisky; (iii) correct any erroneous impression consumers  
27 may have derived concerning the means of production for Maker's Mark  
28 whisky, including without limitation, the placement of corrective

1 advertising and providing written notice to the public;

2 • An order requiring imposition of a constructive trust and and/or  
3 disgorgement of Defendant's ill-gotten gains and to pay restitution to  
4 Plaintiffs and all members of the Class and to restore to Plaintiffs and  
5 members of the class all funds acquired by means of any act or practice  
6 declared by this court to be an unlawful, fraudulent, or unfair business  
7 act or practice, in violation of laws, statutes or regulations, or  
8 constituting unfair competition;

9 • Distribution of any monies recovered on behalf of members of the Class  
10 via fluid recovery or *cypres* recovery where necessary and as applicable,  
11 to prevent Defendant from retaining the benefits of their wrongful  
12 conduct;

13 • Prejudgment and post judgment interest;

14 • Special, general, and compensatory damages to Plaintiffs and the Class  
15 for negligent and/or intentional misrepresentations;

16 • Exemplary and/or punitive damages for intentional misrepresentations  
17 pursuant to, *inter alia*, Cal. Civ. Code § 3294;

18 • Costs of this suit;

19 • Reasonable attorneys' fees pursuant to, *inter alia*, California Code of  
20 Civil Procedure § 1021.5; and

21 • Awarding any and all other relief that this Court deems necessary or  
22 appropriate.

23  
24 Dated: December 5, 2014

Respectfully submitted,

25  
26 **KAZEROUNI LAW GROUP, APC**

27 By: s/ Abbas Kazerounian  
28

ABBAS KAZEROUNIAN, ESQ.  
MONA AMINI, ESQ.  
ATTORNEYS FOR PLAINTIFFS

## TRIAL BY JURY

132. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Dated: December 5, 2014

Respectfully submitted,

# KAZEROUNI LAW GROUP, APC

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